

RECEIVED  
MAILING BOX

1 KATHLEEN J. ENGLAND #206  
2 630 S. Third Street  
3 Las Vegas, Nevada 89101  
4 Tel: (702) 385-3300  
5 Fax: (702) 385-3823  
6 Attorney for Plaintiff,  
7 JAMES A. BELLE

8 KRISTINA S. HOLMAN #3742  
9 4475 South Pecos Road  
10 Las Vegas, Nevada 89121  
11 Tel: (702) 454-2111  
12 Fax: (702) 454-3333  
13 Attorney for Plaintiff,  
14 SHERYL McDONALD

JULY 18 2003

U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
FILED — AFTER HOURS

18 2003

CLERK, U. S. DISTRICT COURT  
DISTRICT OF NEVADA  
BY *ejm* DEPUTY

ORIGINAL

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

12 JAMES A. BELLE and SHERYL  
13 MCDONALD, Plaintiffs,  
14 vs.  
15 SINCLAIR BROADCAST GROUP,  
16 INC., SINCLAIR MEDIA II, INC. ET AL  
17 Defendants.

Case No.CV-S-03-0201-PMP (RJJ)

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS  
PLAINTIFFS' SECOND, FOURTH AND  
EIGHTH CAUSES OF ACTION**

17 Defendants seek dismissal of Plaintiff Belle's cause of action for constructive discharge and both  
18 Plaintiffs' causes of actions for injunctive relief and punitive damages. Plaintiffs oppose any dismissals  
19 but will concede punitive damages are recoverable under and through other causes of action and but not  
20 as a stand-alone claim according to recent case law.

21 **A. MR. BELLE'S CAUSE OF ACTION FOR CONSTRUCTIVE DISCHARGE IS PROPER  
AND RECOGNIZABLE UNDER NEVADA LAW.**

22 Defendants argue that constructive discharge is not a recognized claim under Nevada law. It is.  
23  
24 *Dillard Department Stores, Inc. v. Beckwith*, 115 Nev. 372, 989 P.2d 882 (1999) (rehearing denied  
25 2000) held:

26 [A] tortious constructive discharge is shown to exist upon proof that (1) the employee's  
27 resignation was induced by action and conditions that are violative of public policy; (2) a

1 reasonable person in the employee's position at the time of resignation would have also resigned  
 2 because of the aggravated and intolerable employment actions and conditions; (3) the employer  
 3 had actual or constructive knowledge of the intolerable actions and conditions and their impact  
 4 on the employee; and (4) the situation could have been remedied.

5 Nevada law has long reflected an inclination for allowing wrongfully fired employees to redress  
 6 their harm under a variety of theories, depending on the nature of the employment relationship, the facts  
 7 of the termination, the availability of statutory remedies, the furtherance of public policy, etc. Like nearly  
 8 every other state, and federal courts in discrimination cases, these have included situations where the  
 9 employee ultimately was forced to resign or leave the employment as opposed to being fired:

10 . . . Constructive discharge occurs when a "reasonable person . . . would have felt that he was  
 11 forced to quit because of intolerable . . . working conditions." *Satterwhite v. Smith*, 744 F.2d  
 12 1380, 1381 (9<sup>th</sup> Cir. 1984). Under this standard, quitting or opting to retire rather than accepting  
 13 a demotion is a sufficient ground to support a jury finding of constructive discharge under the  
 14 ADEA.

15 *Liston v. Las Vegas Metropolitan Police Department*, 111 Nev. 1575, 1579, 908 P.2d 720, 723 (1995).  
 16 In the present case, Mr. Belle is also asserting his rights under federal and state laws which prohibit race  
 17 discrimination in employment. A motion to dismiss which might impact or affect those rights, such as  
 18 depriving him of redress should the statutory claims be eliminated, is not appropriate at this time.

19 **B. TITLE VII ALLOWS ACTIONS FOR INJUNCTIVE RELIEF FOR RACE  
 20 DISCRIMINATION. THERE IS NO LEGAL REASON WHY PLAINTIFFS CANNOT  
 21 ALLEGE IT SEPARATELY.**

22 Defendants have cited no authority that a court, upon a motion to dismiss, should be dismissing  
 23 a separately stated claim for injunctive relief under Title VII. Most likely, this is because Title VII  
 24 explicitly confers upon the courts the power to grant injunctive relief to remedy a violation of the Act.  
 25 The Civil Rights Act of 1991 expanded the remedial power of the court:

26 If the court finds that the respondent has intentionally engaged in or is  
 27 intentionally engaging in an unlawful employment practice charged in the complaint, the  
 28 court may enjoin the respondent from engaging in such unlawful employment practice,  
 and order such affirmative action as may be appropriate, which may include, but is not  
 limited to, reinstatement, or hiring of employees, with or without back pay (payable by  
 the employer, . . . responsible for the unlawful employment practice), or any other  
 equitable relief as the court deems appropriate.

1 42 U.S.C. 2000e-5(g). Thus these Plaintiffs, at this stage, are entitled to assert broad claims and to ask  
2 for injunctive relief, an equitable and separate claim, under Title VII, as it has been amended. This  
3 injunctive relief claim is different than the disparate treatment theories under which they pled their  
4 garden variety race discrimination claims which are set forth in the first cause of action. Defendants  
5 should not be permitted to narrow Plaintiffs' claims and remedies at this stage of the litigation.  
6

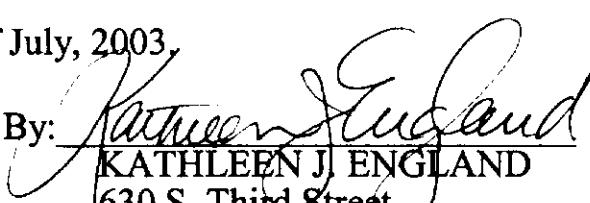
7 **C. PLAINTIFFS AGREE THEIR SEPARATELY STATED CAUSE OF  
ACTION FOR PUNITIVE DAMAGES MAY BE TREATED AS REMEDY REQUESTS AND  
PRAYERS FOR ALL CAUSES OF ACTION WHICH ALLOW PUNITIVE DAMAGES**

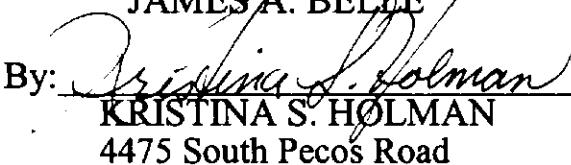
9 Four of the causes of action pled by these Plaintiffs, race discrimination, constructive discharge,  
10 §1981 and intentional infliction of emotional distress, allow recovery of punitive damages. The claim  
11 for those damages was separately stated so that they would apply, as applicable, to the particular causes  
12 of action. The separate statement would not affect the recoverability or the means for recovery. To the  
13 extent this Court feels it is necessary for each individual cause of action to contain a statement that  
14 plaintiffs are seeking punitive damages, Plaintiffs are willing to file an amended complaint although it  
15 seems that to require Plaintiffs to do so is promoting form over substance.  
16

17 **Conclusion**

19 Defendants' motion to dismiss should be denied. If the Court is inclined to rule that a separately  
20 stated cause of action for punitive damages is defective even where it is applicable to different causes of  
21 action, then Plaintiffs ask leave of Court to file an amended complaint.

22 Respectfully submitted this 18<sup>th</sup> day of July, 2003,

23 By:   
24 KATHLEEN J. ENGLAND  
25 630 S. Third Street  
26 Las Vegas, Nevada 89101  
27 Attorney for Plaintiff,  
28 JAMES A. BELLE

By:   
KRISTINA S. HOLMAN  
4475 South Pecos Road  
Las Vegas, Nevada 89121  
Attorney for Plaintiff,  
SHERYL McDONALD

1

2

3 CERTIFICATE OF MAILING

4

I HEREBY CERTIFY that on this 18<sup>th</sup> day of July, 2003, a true and correct copy of the foregoing was sent via U. S. Mail, postage prepaid, upon the following counsel of record for defendants:

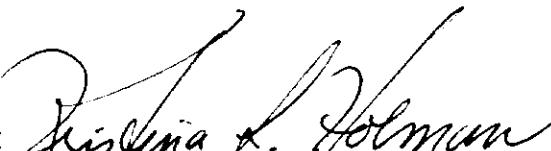
5

Patrick H. Hicks  
Wendy Medura  
Littler Mendelson  
3930 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89109-0920

6

7

8

9  
10 By:   
KRISTINA S. HOLMAN  
4475 South Pecos Road  
Las Vegas, Nevada 89121  
Attorney for Plaintiff,  
SHERYL McDONALD

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28